

The 'Safe Neptunia'

The 'Straits Hope' (Owners of) v The 'Safe Neptunia' (Owners of) (Skandinaviska Enskilda Banker (South East Asia) Ltd & Anor, Interveners)

HIGH COURT (SINGAPORE) – MOTION IN ADMIRALTY
SUIT NO 283 OF 1986
THEAN J
29 APRIL 1988

Shipping – Whether crawler crane used for the operation of the vessel is part of the vessel – Whether mortgagee of crawler is entitled to possession of crane despite arrest of vessel by the plaintiffs – Declaratory orders

The contest in this motion was only between the first intervener and the second intervener. The first intervener was the mortgagee of a crawler crane ('the crane') on board the defendants' vessel ('the vessel') and the second intervener was the shipyard which had carried out repair and conversion works to the vessel. This was a motion by the first intervener for the following declarations: (i) that the crane on board the defendants' vessel was not part of the vessel (ii) that the second intervener did not have any lien on the crane which was in the possession of the second intervener at that time, and (iii) that the first intervener was entitled to possession of the crane. The second intervener contended, *inter alia*, that the crane enhanced the performance and capabilities of the vessel as a work barge and hence once it was placed on board the vessel, it became an appurtenance thereof and therefore a part of the vessel.

Held: (1) It was never intended by the owner of the crane (Consafe) or for that matter by the charterers and shipowners that the crane should be incorporated into and become a part of the vessel. Throughout, it was owned by Consafe subject to the mortgage it had created in favour of the first intervener. It was not affixed or attached to any part of the vessel; it was at all times identifiable as a crawler crane and was used as such. Being a mobile crane, it could move along the timber board on the vessel. It is true that with the crane as an additional crane, the vessel's capabilities and performance as a work barge were enhanced. But it does not follow that the crane had thereby become a part of the vessel. The crane was not part of the vessel.

(2) The second intervener has a lien on the crane for the sum of \$800, being the charge for their repair works carried out to the crane while the crane was on board the vessel.

(3) The first intervener was and is entitled to the crane as mortgagee subject to the lien of the second intervener for \$800.

Cases referred to

- 1 *The Frolic* 148 Fed Rep 918 (refd)
- 2 *The Dundee* 1 Hagg 109; 166 ER 39 (refd)
- 3 *Gale v Laurie* 5 B & C 156; 108 ER 58 (refd)
- 4 *The Mildred* 43 Fed Rep 393 (refd)
- 5 *Learned v Brown* 94 Fed Rep 876 (refd)
- 6 *The Showboat* [1931] AMC 19 (refd)
- 7 *The Hironde* [1937] AMC 1597 (refd)
- 8 *The Diane* 45 Fed Supp 510 (refd)
- 9 *The Silia* [1981] 2 Lloyd's Rep 534 (refd)
- 10 *Lewis v Andrews and Rowley Pty Ltd* (1956) SR (NSW) 439 (refd)

- A 11 *Bergougnan v British Motors Ltd* (1930) 30 SR (NSW) 61 (refd)
12 *Rendell v Associated Finance Pty Ltd* (1957) VR 604 (folld)

Govindarajulu Asokan for the first intervener.
Jude Benny for the second intervener.

Cur Adv Vult

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Thean J.: This is a motion by the first intervener, Skandinaviska Enskilda Banker (South East Asia) Limited, for, *inter alia*, the following declarations, namely: (i) that a crawler known as Manitowac 4600 S5 Lift Crane, serial no 460037 ('the crane'), at the material time on board the vessel, 'Safe Neptunia' ('the vessel'), was not part of the vessel, (ii) that the second intervener, Bethlehem (Singapore) Private Limited, did not and does not have a possessory or any lien on the crane on board the vessel, which at that time was in the possession of the second intervener, and (iii) that the first intervener is entitled to possession of the crane. The contest in this motion is only between the first intervener, who is the mortgagee of the crane, and the second intervener, the shipyard, which had carried out repair and conversion works to the vessel.

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The vessel is a work/accommodation barge and at the material time was owned as to 75% thereof by Consafe (Jersey) Limited of St Helier, Jersey, Channel Islands, and as to 25% thereof by Wallenius Safe Neptunia AB of Sweden. By a demise charterparty dated 13 February 1984, the owners chartered her to Consafe AB of Gothenburg, Sweden, and Consafe Far East Private Limited, a company incorporated in Singapore, was appointed the managing agent of the vessel by the charterers. At all material times, on board the vessel there was and had always been a crawler crane, Manitowac 4100, which was also owned by the same owners who owned the vessel. In late 1984, Consafe Far East Private Limited ('Consafe') acquired the crane (ie Manitowac 4600, serial no 460037) and the first intervener financed the acquisition thereof by advancing a loan of US\$800,000 to Consafe, and, as security for the loan, took a mortgage of the crane. Upon the purchase of the crane, Consafe hired it to the demise charterers and in November 1984 or thereabout the crane was placed on board the vessel.

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On 19 April 1985, a ship repair agreement was made between the second intervener and Consafe, as manager for the charterers, for certain repairs to be carried out to the vessel, which were necessitated by a collision between the vessel and another vessel, 'Straits Hope'. Pursuant to the agreement, the repairs were carried out and an invoice for \$905,800 was rendered by the second intervener. On 24 May 1985, a conversion agreement was entered into between the second intervener and Consafe, as agent for the charterers, for the conversion of the vessel to a combination/lay barge. The second intervener, without having been paid for the repair works carried out, com-

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menced the conversion works, and in respect of the latter, further invoices amounting to a sum of \$3,671,432.32 were rendered. On 2 September 1985, Consafe instructed the second intervener to stop all works on the vessel, as the owners and the charterers were in some financial difficulties. The total amount then owing to the second intervener was \$44,577,232.32 which remains unpaid.

Consafe, the owner of the crane, made only two interest payments to the first intervener and no instalment of the loan was ever paid. The total amount outstanding and owing to the first intervener was \$1,831,481.09 as at 30 June 1986.

On 5 June 1986, the plaintiffs, the owners of the vessel 'Straits Hope', commenced this action and by a warrant of arrest dated the same day arrested the vessel. The second intervener asserted that it had a possessory lien over the vessel and also the crane for the total sum of \$4,577,232.32; the lien on the crane, however, was disputed by the first intervener who was the mortgagee thereof.

On application by the plaintiffs, an order was made on 2 November 1987 for appraisal and sale pendente lite of the vessel and all the equipment on board excluding, however, the crane. Upon subsequent application also made by the plaintiffs, an order was made on 30 March 1987 requiring the first intervener to cause the removal of the crane from the vessel and to bear initially the costs of and incidental to such removal, reserving such costs for determination at a later date upon the outcome of this motion. Accordingly, the first intervener caused the crane to be removed and it was placed in the yard of the second intervener. Then on 11 September 1987, on application by the first intervener, by consent an order was made for the sale of the crane at a price of not less than US\$700,000 and the proceeds therefrom be invested on fixed deposit with a bank or finance company in Singapore to abide by the outcome of this motion. The crane, however, has not yet been sold and is presently lying in the yard of the first intervener's agent.

Before me three issues have been raised, namely: (i) whether the crane was part of the vessel; (ii) whether Consafe was estopped from saying that the crane and the vessel did not come into the second intervener's yard as one unit; and (iii) whether any work had been carried out on the crane, and if it had, whether the second intervener had a possessory lien on the crane. These issues involve questions of fact and law. The parties, however, have agreed that I should determine these issues on the basis of the affidavits filed.

The material facts which are not in dispute are as follows. First, the vessel is a work/accommodation barge and was used primarily to accommodate workers and served as a working platform for offshore operations. She

arrived in Singapore as a cargo on board a submersible vessel and at that time she did not have the crane on board. The only crane then on board was the Manitowac 4100, and whilst this crawler crane could be removed from the vessel, it had always been considered by the shipowners and the charterers as part of the vessel. Secondly, the crane (the subject matter of this dispute) was subsequently put on board the vessel; it was not owned by the shipowners or the charterers but by Consafe which had created a valid mortgage thereon in favour of the first intervener and hired it to the charterers. Thirdly, the crane was not in any way affixed or attached to the vessel; it is a mobile crane. Fourthly, as stated by Mr Vlado Brnvicevic, the managing director of Consafe, in his affidavit affirmed on 9 September 1986 — a statement which was not challenged — a crawler crane such as the crane is not a purpose-built crane for marine work or operation. It can be used and has been effectively used for onshore work, for instance in building/construction sites. In fact, the second intervener had a crawler crane for use in its yard. Lastly, according to the specifications of the vessel, as described in a brochure (exhibit GWB-4), only the crawler crane, Manitowac 4100, was included as part of the vessel. It seems to me that the operations of the vessel envisaged the use of this crane, though as stated by Mr Vlado Brnvicevic there were several projects in the past in which the vessel was engaged where no crane, not even the crawler crane, Manitowac 4100, was used. The crane was plainly an additional crane required by the charterers for the operation of the vessel. However, it is not clear, and there was no evidence, that the crane was absolutely essential and indispensable for the operation of the vessel.

It was argued by Mr Benny on behalf of the second intervener that the crane enhanced the performance and capabilities of the vessel as a work barge, and hence once it was placed on board the vessel, it became an appurtenance thereof and therefore a part of the vessel. He relied on a case in the United States, *The Frolic*,¹ where a vessel called 'The Frolic' was forfeited for violating the United States Chinese Exclusion Act 1886 and a chronometer on board 'The Frolic' was held to be included in the vessel as an appurtenance thereof. In that case, the owner of the chronometer hired it to the owner of the vessel for use on board 'The Frolic' which was bound for Labrador, and it was found by the court that the chronometer was essential for the voyage to Labrador and was supplied by the owner thereof on account of the vessel and the owner of the vessel. The learned judge held that where an instrument, such as the chronometer, was supplied on account of the owner of the vessel as a necessary part of an equipment for a special service, then it should be regarded as appurtenant to the ship and it was included in the term 'ship' or 'vessel'. The term 'vessel' in the Act was held to be broad enough to include the vessel's tackle, apparel, furniture and appurtenances. The ques-

tion whether the chronometer was owned separately was irrelevant for the purpose of forfeiture; for that purpose, the real question was whether it was used as an appurtenance of the vessel which violated the Act. The learned judge at the conclusion said, at pp 923-924:

The question before us is whether the claimants have shown that this chronometer, found aboard 'The Frolic', was not a part of her appurtenances. The claim alleges merely that they are the owners of the chronometer. This is not enough to avoid a forfeiture; for the question of title becomes immaterial, if they have in fact consented to its use as an appurtenance of the vessel. Such consent sufficiently appears, and makes the chronometer part of the vessel for the purposes of forfeiture.

The case, *The Dundee*,² was also relied upon by counsel for the second intervenor. In that case, a vessel called 'The Dundee', on a voyage to Greenland fisheries, collided with another vessel 'Princess Charlotte', in consequence of which the latter sank with the whole of her cargo. The question for decision of the court was whether the fishing stores on board the 'The Dundee' were liable to contribute in compensation for the damage to 'Princess Charlotte' under the relevant statute then in force, namely, the statute 53 G 3, c 159 entitled 'An Act to Limit the Responsibility of Ship Owners in Certain Cases'. By the first section of the Act, an owner of a ship was not liable for any loss or damage arising by reason of an act done without his fault or privity to any other ship further than the value of his ship or vessel and the freight due or to accrue due during her voyage. In that section, the word 'ship' only was used but in the subsequent sections the phrase 'ship and her appurtenances' was present. The Court of Admiralty held that by virtue of the later sections, the first section was intended to include the appurtenances of the ship and subjected such appurtenances to contribution and that the fishing stores form part of the appurtenances of the vessel and were therefore liable to contribute to payment of the compensation. It is clear that the decision in that case turned on the construction of the relevant statute and the fact that the stores on board the vessel belonged to the owners of the ship. After the judgment was delivered, the owner of 'The Dundee' brought a suit to the Court of King's Bench for a prohibition to prevent the execution of the judgment. The case subnom *Gale v Laurie*³ came before Abbot CJ, and he said, at p 164:

The ship in question was in the prosecution of a voyage in which no freight could be earned. The fishing stores were not carried on board the ship as merchandize, but for the accomplishment of the objects of the voyage; and we think, that whatever is on board a ship for the object of the voyage and adventure on which she is engaged, belonging to the owners, constitutes a part of the ship and her appurtenances within the meaning of this Act, whether the object be warfare, the conveyance of passengers, or goods, or the fishery.

Both the decisions must be considered in the context of the relevant statutes applicable, and in my view they do

A not really assist the determination of the issue before me. In this case, the crane was not under the same ownership as the vessel and existed and remained intact as a crawler crane on board the vessel, though it was used for the operation of the vessel. Numerous American cases have been cited to me by Mr Govindarajulu on behalf of the first intervenor: *The Mildred*,⁴ *Learned v Brown*,⁵ *The Showboat*,⁶ *The Hironde*⁷ and *The Diane*.⁸ In all these cases, the chattels in question were on board the vessels, but did not belong to the owners of the vessels and were held not to have become part of the vessels, though they were used for the purpose of the vessels. In the case of C *The Silia*,⁹ the question was whether the oil on board the vessel owned by the owner of the vessel was part of the vessel. Sheen J held that it was and in the course of the judgment said, at p 537:

D The admiralty jurisdiction of this court to hear and determine the questions or claims within its jurisdiction may be involved by an action in rem against a ship in the circumstances prescribed by s 3 of the Administration of Justice Act 1956 (the 1956 Act). What I have to decide is whether the word 'ship' in s 3 has a limited meaning, and means no more than the hull, machinery and spare parts, or whether 'ship' has a wider meaning and means the hull, machinery and everything on board which is the property of her owners. If the word 'ship' has that wider meaning then this application must fail.

E I have no doubt that in the context of an action in rem the word 'ship' includes all property aboard the ship other than that which is owned by someone other than the owner of the ship. I will set out the reasons which have led me to this conclusion.

F Mr. Govindarajulu also referred me to *Lewis v Andrews and Rowley Pty Ltd*,¹⁰ a case decided by the Full Court of New South Wales, Australia. There, the owner of a trailer gave a registered bill of sale to a financier to secure a loan. At that time, the vehicle had been stripped of many essential parts and the tyres were in a very poor condition. The owner then hired out the vehicle and the hiring agreement contained a provision to the effect that all spare parts and accessories applied and fitted to the vehicle would remain the property of the hirer and could be removed by the hirer at any time. After the hiring had commenced, many of the important parts of the vehicle, including the tyres, were supplied and fitted by the hirer. The owner made default under the bill of sale and the financier took possession of the vehicle, and the question arose as to whether those parts had become part of the vehicle. The court held that they did not and that the general rule should apply, namely, the property in chattels is transferred only when the owner so intends. To the argument that the doctrine of accession, whereby parts affixed to a vehicle would become part of the vehicle, should apply, Ferguson J said, at p 443:

In my opinion, the rules relating to accession apply only where it would be impracticable to apply the general rule. If A, a boat builder, employed to repair B's boat, builds planks

into it, it would be impracticable to remove them and they become part of B's boat by accession. On the other hand, if A, legally in possession of B's car, affixes a battery to it with no intention of passing the property to B, it being perfectly practicable to remove it, why should the property in it pass? It seems to me that it is nothing to the point that the vehicle cannot be used as a vehicle without the battery.

Ferguson J found support for his view in the case of *Bergougnan v British Motors Ltd*¹¹ which was also a decision of the Full Court of New South Wales. There, it was held that four tyres supplied by the plaintiff on hire purchase and affixed to the defendant's lorry continued to remain the property of the plaintiff.

Both the cases were considered subsequently by the Full Court of New South Wales in *Rendell v Associated Finance Pty Ltd*¹² and the test laid down by Ferguson J for determining the passing of property in chattels was approved. In that case, the plaintiff owned a Chevrolet car engine which he installed in his Chevrolet truck. He used the truck for two years, and he then removed the engine from his truck and hired it to one, Pell, who used it to replace a similar engine in a Chevrolet truck which he hired, also on hire purchase terms, from the defendant, a finance company. The question arose as to whether the Chevrolet engine, having been installed to the defendant's truck, had become its property. The court held that the engine continued to belong to the plaintiff. O'Bryan J delivering the judgment of the court said, at p 610:

... Prima facie the property in the accessory does not pass to the owner of the vehicle if the owner of the accessory did not intend it to pass. It is for the defendant by proper evidence to show that the necessity of the case requires the application of principles whereby the property is deemed to pass by operation of law. The accessories continue to belong to their original owner unless it is shown that as a matter of practicality they cannot be identified, or, if identified, they have been incorporated to such an extent that they cannot be detached from the vehicle.

It is clear in this case that the plaintiff was the owner of the engine when it was annexed to the truck and that he intended to retain the property in the engine until Pell exercised his option to buy it. In our opinion, he is entitled to rely on the presumption that he continued to remain the owner, so that in the absence of evidence to the contrary the engine continued to belong to him, which, in this case, would require evidence from the defendants that as a matter of practicality it had been so attached to the truck that it could not be detached therefrom.

These principles in my view are equally applicable here. It was never intended by Consafe or for that matter by the charterers and shipowners that the crane should be incorporated into and become a part of the vessel. Throughout, it was owned by Consafe subject to the mortgage it had created in favour of the first intervenor. It was then hired to the charterers and in consequence was put on board the vessel. It was not affixed or

A attached to any part of the vessel; it was at all times identifiable as a crawler crane and was used as such. Being a mobile crane, it could move along the board on the vessel. Plainly, the charterers required the crane for the operations of the vessel. It is true that with the crane as an additional crane, the vessel's capabilities and performance as a work barge were enhanced. But it does not follow that the crane had thereby become a part of the vessel. I am clearly of the opinion that the crane was not part of the vessel.

C Next, it was argued on behalf of the second intervenor that the vessel and the crane came to its yard as 'one unit' and that Consafe was estopped from denying it as such. I find that there is no basis for such an argument. It is true that the vessel came to the yard with the crane on board; but the crane remained intact as a crawler crane. True it is also that Consafe invited the second intervenor to quote the costs for the repair works to be carried out to the vessel and the crane. But that did not constitute a representation, and Consafe did not otherwise make any representation to the second intervenor that the vessel and the crane belonged to the same owner or in anyway were to be treated as 'one unit'. At any rate, there was sufficient evidence before me to found the argument of estoppel advanced on behalf of the second intervenor. The argument therefore must fail.

I now turn to the last issue, which is really a question of fact. On the basis of the affidavits filed, it appears that some works had been carried out to the crane while on board the vessel in the second intervenor's yard; they were carried out by Coastal Equipment (Singapore) Pte Ltd, presumably, as the subcontractor of the second intervenor. In respect of the works carried out, the subcontractor charged only a sum of \$620. This does not appear to have been denied or challenged by the second intervenor. However, the second intervenor charged a sum of \$7,000 for the works carried out by the subcontractor. The second intervenor sought to explain that the large discrepancy between what was charged by the subcontractor and what it charged for the works carried out by the former was 'not unusual in the ship repair industry'. Assuming that such a practice is not unusual (for which there was no evidence in support), I cannot see how the second intervenor can reasonably justify inflating a paltry sum of \$620 to a huge amount of \$7,000. What the second intervenor did in this respect is manifestly unsustainable; it patently exceeded all bounds of reasonableness. I therefore reject the claim for \$7,000 for the works carried out to the crane. On the basis of what Mr Vlado Brnvicevic deposed to in his affidavit, affirmed on 19 November 1987, I am disposed to add to the sum of \$620 a sum of \$180 which, in my view, represents a fair and reasonable amount of surcharge a shipyard would charge in this case, thus making a total round

figure of \$800. I therefore hold that the second intervener has a lien on the crane for the sum of \$800.

In the result, the first intervener was and is entitled to the crane as mortgagee subject to the lien of the second intervener for \$800. Accordingly, I declare that the crane was not part of the vessel and that the first intervener is entitled to possession thereof subject to payment of a sum of \$800 to the second intervener in discharge of the latter's lien. I order the second intervener to pay to the first intervener the costs of and incidental to this motion. As for the costs of removal of the crane from the vessel, they remain payable by the first intervener.

Order accordingly.

Solicitors: *Rodyk & Davidson; Jude P Benny & Co.*

Reported by *Ng Sheau Jiuan*

A MALAYSIAN REPORTS

Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors

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SUPREME COURT (KUALA LUMPUR) – CIVIL APPEAL NO 51 OF 1988
ABDUL HAMID AG LP, LEE HUN HOE CJ (BORNEO),
HASHIM YEOP A SANI SCJ, MOHAMED YUSOFF AND
GUNN CHIT TUAN JJ
8 AND 9 AUGUST 1988

C

Societies – Registered society establishing branch without prior approval of Registrar – Society and branch deemed to be unlawful societies – Effect of – Societies Act 1966, ss 12(3) and 41(c)

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The appellants had sought a number of declarations relating to the society UMNO (see [1988] 2 MLJ 129). The learned trial judge in an oral judgment held that UMNO had become an unlawful society and therefore the appellants could not seek the aid of the court for the grant of the reliefs. Subsequently in his written grounds of decision while affirming that UMNO was an unlawful society he went on to state: 'It follows that the office-bearers elected at the 37th general assembly in 1984 continued to be the lawful office-bearers of UMNO.'

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The appellants appealed against the decision of the learned judge. One of the respondents cross-appealed against the finding of the learned judge that the office-bearers elected at the 37th general assembly in 1984 continued to be the lawful office-bearers of UMNO. At the High Court, it was agreed that there were 30 unapproved branches in four divisions which held their annual general meetings and elected delegates or sent observers to the division conferences which in turn elected delegates to the general assembly on 24 April 1987.

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Held, dismissing the appeal and allowing the cross-appeal: (1) The learned judge was absolutely correct in his interpretation of ss 12(3) and 41(c) of the Societies Act 1966 both in his oral judgment and his grounds of decision. The learned judge was also correct in his conclusion that as a result of the existence of the unlawful branches, the main body (UMNO) was also rendered unlawful by the statute.

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(2) However the additional finding in the grounds of decision to the effect that the office-bearers elected at the 37th general assembly in 1984 would continue to be the lawful office-bearers of UMNO is a finding which cannot be supported by law and is unwarranted by the evidence.

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(3) The parties who appeared before the learned judge in the instant case neither appeared as members or officials of a lawful society nor as persons otherwise having any rights or interests which can be recognized by the court. UMNO was unlawful by operation of law and being unlawful no member can acquire any right which is founded on that which is declared by law to be unlawful. The learned judge could have struck out their suit in limine and cannot be said to be wrong in not granting any declaration and dismissing the claims of the plaintiffs.

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(4) The appeal should be dismissed. As regards the cross-appeal, the finding of the learned judge in his grounds of decision relating to the 1984 office-bearers is wrong in law and should be set aside.